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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 KEVIN WEHMEYER, a single man; and  
12 NORTHWEST PACIFIC, INC., a Nevada  
13 corporation,

14                   Plaintiffs,

15                  Case No. 05-5627 KLS

16                  v.

17 KITSAP COUNTY, a political subdivision of  
18 the State of Washington,

19                   Defendant.

20                  ORDER GRANTING DEFENDANT'S  
21 MOTION FOR SUMMARY JUDGMENT  
22 OF DISMISSAL

23                  Defendant Kitsap County filed a Motion for Summary Judgment (Dkt. #11) requesting dismissal of  
24 the plaintiffs' claims on two grounds, the running of the statute of limitations and res judicata. This court  
25 finds that the plaintiffs' claim is barred by the statute of limitations and should therefore be dismissed with  
26 prejudice.

27                  **FACTS:** On October 24, 2001 the defendant issued a citation to the plaintiff for violating sections  
28 17.445.010 and 17.445.070 of the Kitsap County Code ("Sign Ordinance"). The facts surrounding the  
citation and the underlying case can be found at *Kitsap County v. Mattress Outlet*, 153 Wn.2d 506, 104  
P.3d 1280 (2005) and need not be repeated for purposes of this motion.

29                  A Kitsap County District Court Judge conducted a hearing on the alleged violation on May 22,  
30 2002 and on August 8, 2002 issued a decision finding the ordinance unconstitutional. Kitsap County

1 appealed the District Court's decision to the Superior Court. On May 17, 2003 a Kitsap County Superior  
2 Court Judge reversed the District Court's decision and found the ordinance constitutional. The  
3 Washington State Supreme Court reversed the Superior Court on January 27, 2005 with four of the  
4 justices finding the ordinance unconstitutional.

5 The plaintiff filed a notice of claim against Kitsap County on June 11, 2004 and filed this action in  
6 Pierce County Superior Court on August 25, 2005. The case was subsequently removed to federal court.

7 **DISCUSSION:** The defendant's rely on *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045 (9<sup>th</sup>  
8 Cir. 2000) in support of its motion for summary judgment. This court finds the reasoning in *RK Ventures*  
9 applicable to this civil case.

10 It is undisputed that the plaintiffs' § 1983 claim is subject to a three-year statute of limitations.  
11 According to the holding in *RK Ventures*, the statute of limitations commenced running on the date the  
12 citation was issued, October 24, 2001. This date was the "operative decision" and all other court  
13 proceedings were the inevitable consequence of this decision. The plaintiffs filed their claim on August 25,  
14 2005, more than three years after the statute of limitations commenced running. The plaintiffs' claim is  
15 therefore time barred and the defendant is entitled to summary judgment of dismissal.

16 This court notes that the cases relied on by the plaintiff in opposition to the defendant's motion are  
17 based on either criminal cases or takings cases. Neither type of case is applicable to the case at bar.

18 The defendant's motion for summary judgment of dismissal is hereby GRANTED and this case is  
19 hereby dismissed with prejudice.

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21 DATED this 5<sup>th</sup> day of February, 2006.  
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24 /s/ Karen L. Strombom  
Karen L. Strombom  
U.S. Magistrate Judge  
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